

IMMIGRATION

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HCR 08-1013 (<i>Postponed Indefinitely</i>) <i>No Bail Serious Crimes Illegal Alien</i>	SCR 08-004 (<i>Postponed Indefinitely</i>) <i>No Plea Bargain to Avoid Deportation</i>	SB 08-074 (<i>Postponed Indefinitely</i>) <i>Illegal Alien Trespass Crime</i>
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HB 08-1184 (<i>Postponed Indefinitely</i>) <i>Unlicensed Driver Arrest & Impound</i>	HB 08-1039 (<i>Postponed Indefinitely</i>) <i>Voter Photo Identification in Elections</i>	HB 08-1177 (<i>Postponed Indefinitely</i>) <i>Identification Documents Voting Citizenship</i>
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SCR 08-006 (<i>Postponed Indefinitely</i>) <i>English Official Language Public Entities</i>		

As in past legislative sessions, the General Assembly considered a number of bills relating to immigration. Specifically, the legislature considered measures with regard to: enforcing federal immigration laws and creating additional crimes related to illegal immigration; employment of immigrants; public benefits for immigrants; voting and identification requirements; and the use of the English language by state agencies and political subdivisions.

Law Enforcement

House Concurrent Resolution 08-1013 would have submitted to the voters the question of whether the constitution should be amended to deny bail to a person who entered and remained in the United States illegally if he or she was charged with a serious felony offense or an offense involving driving under the influence of alcohol or drugs. The resolution was postponed indefinitely. **Senate Concurrent Resolution 08-004** would have submitted to the voters the question of whether courts should be prohibited from accepting a guilty plea from a defendant who was present in the United States in violation of federal immigration laws. It would apply if the guilty plea was made

as a result of a plea offer and would result in the defendant avoiding removal from the country by the United States Immigration and Customs Enforcement Agency. This resolution was also postponed indefinitely.

Senate Bill 08-074, postponed indefinitely, would have created the crime of trespassing by an illegal alien. A person committed the crime of trespassing by an illegal alien if the person was in the state while in violation of federal immigration law. Trespassing by an illegal alien was an unclassified misdemeanor punishable by a fine of \$500 for a first offense, a class 1 misdemeanor for a second offense, and a class 4 felony for a third and subsequent offense. Also postponed indefinitely, **Senate Bill 08-087** would have doubled the number of officers in the immigration enforcement unit of the Colorado State Patrol from 24 to 48.

Several measures concerned the enforcement of federal immigration laws by the state. **Senate Concurrent Resolution 08-009** would have submitted to the voters the question of whether the constitution should be amended to prohibit officials, agencies, and employees of the state or any political subdivision from adopting a policy that limits the enforcement of federal immigration laws. The resolution also required state or political subdivision agencies and employees to make a reasonable attempt to determine the immigration status of a person with whom they had legitimate contact, where reasonable suspicion existed regarding the immigration status of the person. The person was to be referred to U.S. Immigration and Customs Enforcement if the person was in the country illegally and a state or local law enforcement entity elected not to prosecute the person. Officials, agencies, or employees of the state could not be prohibited from receiving or sending information related to the immigration status of any individual. Individuals could have brought actions in district court to challenge any official, agency, or employee of the state or a political subdivision of the state that adopted or implemented a policy that limited the enforcement of federal immigration law. Upon a finding that an entity implemented such a policy, all state funding could have been withheld from the entity, or the entity could have been required to pay a civil penalty of up to \$5,000 for each day the policy remained in effect. The measure was postponed indefinitely.

House Bill 08-1272 required, within 60 days of the bill's effective date, the governor, or the governor's designee, to negotiate with the U.S. Department of Homeland Security to amend existing memoranda of understanding regarding state and federal enforcement of immigration laws. The negotiations were to focus the following items:

- provisions that condition the use of a state or local detention facility for a suspected violator of immigration laws on the adoption of restrictions limiting the use of force policies in such facilities; and
- any prohibition on the state reporting the final disposition of a person detained for suspicion of violation of immigration law.

The governor, or his designee, was to report the results of the negotiation to the House and Senate State, Veterans, and Military Affairs Committees by December 1, 2008. The bill was postponed indefinitely.

Employment

Designed to speed the processes associated with the federal H-2A labor certification process and to increase the supply of temporary seasonal agricultural workers in the state, **House Bill 08-1325** establishes the Nonimmigrant Agricultural Seasonal Worker Pilot Program in the Department of Labor and Employment. The director of the Department of Labor and Employment and the Commissioner of Agriculture, in conjunction with the Governor's Office of Economic Development and International Trade, may seek to implement agreements between Colorado and foreign countries to assist in recruiting temporary agricultural workers. The program is limited to 1,000 employees in the first year with increases of 1,000 employees annually for four years.

The bill establishes the Nonimmigrant Agricultural Seasonal Worker Pilot Program Advisory Council. The council must make recommendations for the adoption of rules as necessary to implement the program and assist in the preparation of the report to the General Assembly regarding the progress of the program that is required by February 1, 2010. Additionally, the Advisory Council is required to consult with health insurance carriers in the state to determine the availability of health insurance plans for employees participating in the program. Any legislative recommendations deemed necessary to make health insurance available to seasonal agricultural workers must be included in the report to the General Assembly.

Employers may apply to the Department of Labor and Employment to participate in the program. For employees hired through the program, the employer is required to pay for transportation and housing, provide wages in compliance with federal law, and provide worker's compensation insurance, tools, and meals. In addition, the employer must guarantee the employee work for 75 percent of the work days during the contract and comply with certain provisions regarding payment of the employee. Employers must notify the Department of Labor and Employment if an employee who has been hired through the program absconds his or her employment. Employees participating in the program must apply for a Colorado identification card within two weeks of arriving in Colorado.

Civil penalties may be assessed against persons who do not comply with the provisions of the bill. Any fees or fines collected under the program will be placed into the Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund to cover the administrative costs associated with the program. The Department of Labor and Employment and the Agriculture Commissioner must report the progress of the pilot to various committees of the General Assembly by February 1, 2010. The program repeals January 1, 2014.

Under current law, state contractors are required to attempt to use a federal program, previously known as the Basic Pilot Program and now known as the E-Verify Program, to verify that their employees who will perform work under a public contract for services are legally authorized to work in the United States. **Senate Bill 08-193** requires that state contractors verify only newly hired employees and excludes certain types of service contracts, including those for financial and investment services, research activities of higher education, intergovernmental agreements, and agreements for information technology, from the verification requirements. The bill creates an additional program within the Colorado Department of Labor and Employment that contractors may use to verify the employment eligibility of newly hired employees. Under the state program, a

contractor must notify the department, affirm that the legal status of each newly hired employee was examined, retain files, and not alter or falsify identification documents for new employees. Contractors must also consent to random audits by the department.

Another bill related to employment verification requirements, **Senate Bill 08-139**, requires the Department of Labor and Employment to include a statement in its quarterly electronic publication distributed to employers. This statement must notify employers of the federal prohibition against hiring or continuing to employ an illegal alien. The bill specifies the exact wording, font style, and placement of the notice. The notice must include information about the E-Verify Program and about when, during the hiring process, an employer may lawfully use the program. The department and the Secretary of State will post the notification and information about the program on their web sites.

One additional bill concerning employment verification requirements was considered, but not adopted, by the General Assembly. **Senate Bill 08-083** would have repealed the current requirements for employers to examine and retain records concerning the legal work status of new employees and would have created the Fair and Legal Employment Act. All non-governmental employers in the state would have been required to participate in the federal E-Verify Program for purposes of verifying the work eligibility status of all new employees. Employers would have been subject to financial penalties up to \$10,000 for failure to participate in the E-Verify Program. An employer who hired an unauthorized alien would have been subject to penalties including a probationary period, suspension, and revocation of business licenses. The bill established that it would have been a discriminatory or unfair employment practice for an employer to discharge an employee who was legally in the country while retaining an employee who was not legally in the country. Any person who knowingly filed a false or frivolous complaint would have been guilty of a class 3 misdemeanor. The bill was postponed indefinitely.

Public Benefits

Responding to reports of confusion regarding the ability of institutions of higher education to classify the children of immigrants as in-state students for purposes of tuition, **Senate Bill 08-079** specifies that a U.S. citizen may be classified as an in-state student for tuition purposes if the student graduated from a high school and attended a high school in the state for the three years immediately preceding his or her enrollment in a state institution of higher education, or completed a general equivalency diploma and lived in the state for the three years prior to enrollment in a state institution of higher education.

House Bill 08-1326 would have required state agencies and political subdivisions that provide public benefits, regardless of the source of funding for the benefits, to verify the lawful presence in the country of persons 18 years of age or older who apply for such benefits. The bill also required state agencies and political subdivisions that transferred or appropriated money to individuals to provide public benefits to ensure that such individuals were verifying the lawful presence of applicants for public benefits, regardless of the source of funding of the benefits. State moneys were not to be transferred or appropriated to individuals who could not demonstrate compliance with the requirement to verify lawful presence. The bill was postponed indefinitely.

Voting and Identification Requirements

House Bill 08-1184, postponed indefinitely, would have required peace officers to arrest a person suspected of having a forged driver's license. In addition, the bill prohibited a person from driving in the state unless he or she was legally present in the country and had a valid driver's license issued by the state Department of Revenue. A peace officer was required to arrest a person when probable cause existed to believe that the person was illegally in the United States and was driving without a valid license. A violation of this provision of the bill was a misdemeanor, with a penalty of a term of imprisonment of at least five days but no more than six months, and a fine of not less than \$50 and not more than \$500. In addition, the peace officer was required to impound the vehicle until it was registered, insured, and retrieved by a licensed driver. Violations of the bill were required to be reported to U.S. Immigration and Customs Enforcement, and the bill allowed law enforcement officers that enforce traffic laws to enter into an agreement with the U.S. Attorney General to enforce immigration law.

Current law specifies a number of documents that may be used by eligible electors as identification for election-related purposes. **House Bill 08-1039** would have eliminated documents that do not contain a photograph of the eligible elector from the list of allowable identification documents. The bill was postponed indefinitely. **House Bill 08-1177** required all persons applying to register to vote on and after the effective date of the bill to submit proof of citizenship. Overseas military personnel and other overseas voters were exempt from the requirements. Proof of citizenship did not include proof of voter registration from another state, but did include:

- a valid U.S. passport, or a copy of the pages of the passport that identify the person and show the passport number;
- a birth certificate or a photocopy of a birth certificate;
- a naturalization document or a photocopy of the document; and
- any document or method of proving citizenship established by federal law.

Persons who were registered electors as of July 1, 2008, were deemed to have met the requirements of the law and were not required to submit proof of citizenship. Registered electors were not required to submit proof of citizenship when they moved within the county; changed their name; or declared, changed, or withdrew a political affiliation. The bill was postponed indefinitely.

English Language

Senate Concurrent Resolution 08-006 would have submitted to the voters the question of whether the constitution should be amended to require that any document or publication issued by the state or a political subdivision be written only in the English language. The state or political subdivision may have issued a document or publication in a language other than English for specific reasons, including to comply with federal law, to address immediate health and safety threats, for foreign language instruction, and to protect the rights of criminal defendants or victims of crime. The resolution prohibited discrimination against employees of the state or political subdivisions for using or attempting to use the English language, and the state or a political subdivision could not

require competency in a language other than English as a condition of employment, except for specific reasons. State and political subdivisions were immune from liability for claims related to the failure of the state or political subdivision to provide information in a language other than English. Any person who believed that the state or a political subdivision violated the provisions of the resolution was permitted to file an action for an order to enjoin or restrain the state or political subdivision from continuing the violations. A civil penalty of up to \$1,000 per day could have been awarded against the state or political subdivision that had been found to have violated the provisions of the resolution. The resolution was postponed indefinitely.